

**United States Department of Labor
Employees' Compensation Appeals Board**

S.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Eagan, MN, Employer**

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**Docket No. 20-0530
Issued: December 9, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 9, 2020 appellant filed a timely appeal from a July 25, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted June 6, 2018 employment incident.

FACTUAL HISTORY

On June 29, 2018 appellant, then a 54-year-old senior systems accountant, filed a traumatic injury claim (Form CA-1) alleging that on June 6, 2018 she twisted her left knee, bruised her lower

¹ 5 U.S.C. § 8101 *et seq.*

back, and hit her head when she passed out twice in a restroom stall after donating blood while in the performance of duty. She did not stop work.

In a June 11, 2018 report, Dr. David Anderson, a Board-certified orthopedic surgeon, noted that appellant sustained a syncopal event recently after giving blood. He indicated that she did not know exactly what happened to her knee, but she had immediate and significant pain when she stood and walked following her fall. Dr. Anderson diagnosed left knee pain.

In a report dated June 25, 2018, Robbin Dale Ghery, a physician assistant, indicated that appellant was seen in the emergency department on June 16, 2018 after dizziness with numbness, which she indicated began shortly after donating blood. She reported that appellant had felt a bit dizzy and decided to go to the restroom where she passed out in the stall and woke up on the floor. A June 25, 2018 x-ray of the sacrum and coccyx showed no sacrococcygeal fracture.

A magnetic resonance imaging (MRI) scan of the left knee dated June 26, 2018 revealed a high-grade tear of the medial retinaculum/medial patellofemoral ligament (MPFL) involving the femoral attachment, sprain of the superficial component of the medial collateral ligament (MCL), 1.0 x 1.0 cm area of grade II chondromalacia, and small to moderate joint effusion.

A June 26, 2018 MRI scan of the lumbar spine demonstrated Scheuermann's-like changes with multilevel disc degeneration, broad-based left-sided lateral herniated nucleus pulposus (HNP) at L4-5 with moderate foraminal stenosis and ganglionic impingement, but no demonstrable fracture.

In a July 2, 2018 report, Dr. Anderson noted that appellant was seen in follow up for persistent pain in her left knee. He diagnosed left knee MCL sprain, MPFL sprain, medial retinaculum sprain, and medial and patellofemoral chondromalacia.

On July 10, 2018 Ms. Ghery indicated that appellant had been recently hospitalized for an acute thalamic stroke.

In a July 16, 2018 report, Kari Fernholz, a physician assistant, indicated that appellant had been seen on June 11 and July 2, 2018 and had no work restrictions.

On August 20, 2018 Ms. Ghery noted that appellant had been seen in her clinic on June 25, 2018 and reported that she had donated blood at work and fainted in the restroom, possibly hitting her head. She also indicated that subsequently appellant was transported to the emergency department on June 15, 2018 by a coworker after experiencing stroke-like symptoms and additional evaluation and testing revealed that she did, in fact, experience a stroke. Ms. Ghery opined that it seemed logical that the restroom fall and the subsequent stroke were related, with the fall and head injury possibly causing the stroke.

In a medical note dated September 13, 2018, Dr. Cassandra L. Stacy, a Board-certified oral and maxillofacial surgeon, saw appellant for complaints of a "bad tooth" that she believed needed to be extracted. She diagnosed fracture, nonrestorable of tooth number 15. In an operative report of even date, Dr. Stacy performed surgical removal of tooth number 15.

Appellant sought treatment with Dr. Eric J. Zeiszler, a chiropractor, from November 6 through 21, 2018. Dr. Zeiszler noted that appellant sustained a work-related head injury after a fall and had experienced low back pain following the incident. He diagnosed segmental and somatic dysfunction of sacral and lumbar region, lumbago with sciatica, and contracture of muscle.

In a November 12, 2018 report, Ryan Sword, a physical therapist certified in strength and conditioning, diagnosed segmental and somatic dysfunction of sacral and lumbar region, lumbago with sciatica, and contracture of muscle.

In a December 21, 2018 development letter, OWCP informed appellant of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. It also requested that she submit a narrative medical report from her treating physician, which contained a detailed description of findings and diagnoses, explaining how her work activities caused, contributed to, or aggravated her medical conditions. OWCP afforded appellant 30 days to submit the necessary evidence. It did not receive any additional evidence.

By decision dated January 25, 2019, OWCP accepted that the June 6, 2018 employment incident occurred as alleged, but denied appellant's claim finding that she had not established that her diagnosed medical conditions were causally related to the accepted employment incident.

Appellant subsequently submitted a January 23, 2019 report from Ms. Ghre regarding a hospital follow-up for hypertension and anxiety. Ms. Ghre noted that appellant had been seen in the emergency room on January 17, 2019 for a possible cerebrovascular accident.

On March 5, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an August 22, 2018 report, Dr. Evan M. Williams, a Board certified psychiatrist and neurologist, diagnosed stroke after recurrent symptoms of left-sided numbness involving the face and hand.

Appellant, in a January 1, 2019 response to OWCP's development questionnaire set forth the factual circumstances of her employment incident when she fell.

A January 17, 2019 hospital record noted a normal MRI scan of the brain and a grossly normal magnetic resonance angiogram of the head and neck. In an office visit note of even date, Ms. Ghre diagnosed altered mental status.

In a February 9, 2019 report, Dr. Chad M. Nelson, a general dentist, noted that appellant had lost teeth number 14 and 15 since her stroke and fall in late spring 2018. She had been diagnosed with a root fracture on tooth number 15 and it was noted that tooth number 14 likely had a root fracture also. Dr. Nelson indicated that it was hard to determine exact causality of the root fractures as both teeth had a history of root canals with crowns. He further noted, however, that there had been no noted pathology prior to the fall and that root fractures can be consistent with trauma. Dr. Nelson opined that the sudden loss of teeth number 14 and 15 was related to the trauma appellant experienced with her fall.

In a statement dated February 19, 2019, appellant provided a timeline of events and medical treatment beginning June 6, 2018, when she donated blood at the employing establishment, to January 22, 2019, when she had tooth number 14 extracted and a bone graft completed for a future implant. She asserted that the medical evidence of record established that her diagnosed medical conditions were causally related to the accepted employment incident.

A telephonic hearing was held before an OWCP hearing representative on June 18, 2019. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

In response, appellant submitted a June 18, 2019 report from Dr. Anderson who indicated that he first saw appellant on June 11, 2018 for a left knee injury after a fainting episode five days prior and when she woke her left knee had new significant pain. He indicated that the pain did not exist before the fall and he concluded that the fall was the direct cause of her knee injury.

On June 18, 2019 Dr. Zeiszler indicated that he had been treating appellant since November 6, 2018 for injuries causally related to the June 6, 2018 incident.

Appellant further submitted a June 18, 2019 report from Dr. John R. Bailey, a Ph.D. in psychology, who diagnosed adjustment disorder with mixed emotional features and cerebrovascular accident (CVA) due to an injury at work that had caused ongoing physical and emotional impairment. Dr. Bailey provided a history of injury that appellant had donated blood and then fainted in the bathroom leading to a head and knee injury, damage to her teeth, a stroke the following week, and difficulty regulating her emotions.

OWCP also received a June 21, 2019 report from Dr. Nelson who reiterated that appellant had lost teeth number 14 and 15 since her fall on June 6, 2018.

By decision dated July 25, 2019, OWCP's hearing representative affirmed the January 25, 2019 decision, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted June 6, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,² that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

² *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.³ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁵ The second component is whether the employment incident caused a personal injury.⁶

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted June 6, 2018 employment incident.

In his reports, Dr. Anderson diagnosed left knee MCL sprain, MPFL sprain, medial retinaculum sprain, and medial and patellofemoral chondromalacia due to a left knee injury after a fainting episode at work on June 6, 2018. He indicated in his June 18, 2019 report that appellant's left knee pain did not exist before the accepted employment incident and concluded that the fall was the direct cause of appellant's knee injury. Similarly, in his February 9, 2019 report, Dr. Nelson noted that appellant had no noted pathology in her fractured teeth prior to the accepted employment incident and concluded, therefore, that the sudden loss of teeth number 14 and 15 was related to the trauma appellant experienced with her fall. The Board has held that an opinion that a condition is causally related to an employment injury simply because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.⁸ Therefore, the June 18, 2019 report of Dr. Anderson and the February 9, 2019 report of Dr. Nelson are insufficient to establish appellant's claim.

The remaining reports of Drs. Anderson and Nelson, as well as the August 22, 2018 report of Dr. Williams and the September 13, 2018 reports of Dr. Stacy fail to address causation.

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

⁸ *See A.R.*, 19-0465 (issued August 10, 2020). *M.M.*, Docket No. 18-1522 (issued April 22, 2019); *K.P.*, Docket No. 17-1145 (issued November 15, 2017).

Dr. Williams diagnosed a stroke after appellant presented with recurrent symptoms of left-sided numbness involving the face and hand. Dr. Stacy reiterated a diagnosis of nonrestorable fracture of tooth number 15 and noted performing surgical removal of the fractured tooth. However, these reports do not address the cause of appellant's diagnosed medical conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁹ Therefore, this evidence is also insufficient to meet appellant's burden of proof.

Appellant further submitted a June 18, 2019 report from Dr. Bailey who diagnosed adjustment disorder with mixed emotional features and CVA due to an injury at work on June 6, 2018. He explained that appellant had donated blood and then fainted in the bathroom leading to a head and knee injury, damage to her teeth, a stroke the following week and difficulty regulating her emotions. The Board has held that a medical opinion must provide an explanation of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.¹⁰ While the opinion supporting causal relationship does not have to reduce the cause or etiology of a disease or a condition to an absolute certainty, the opinion must be one of reasonable medical certainty and not speculative or equivocal in character.¹¹ As the opinion of Dr. Bailey regarding causal relationship is conclusory and unexplained, it is insufficient to meet appellant's burden of proof to establish her claim.¹²

Appellant submitted evidence from Ms. Ghare and Ms. Fernholz, physician assistants, and Ryan Sword, a physical therapist. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹³ Consequently, their medical findings and/or opinions are of no probative value and will not suffice for purposes of establishing entitlement to compensation benefits.

Appellant also submitted medical reports dated November 6, 2018 through June 18, 2019 from Dr. Zeiszler, a chiropractor. Under FECA, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.¹⁴ Because Dr. Zeiszler did not treat spinal subluxations that were demonstrated by x-ray to exist, his reports are not considered to be medical evidence and are of no

⁹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ *A.H.*, Docket No. 19-0270 (issued June 25, 2019); *M.W.*, Docket No. 18-1624 (issued April 3, 2019).

¹¹ *C.H.*, Docket No 19-0409 (issued August 5, 2019).

¹² *P.A.*, Docket No. 18-0559 (issued January 29, 2020).

¹³ Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); see also *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA). See also *B.J.*, Docket No. 18-1276 (issued February 4, 2019); *J.R.*, Docket No. 18-0801 (issued November 26, 2018).

¹⁴ 5 U.S.C. § 8101(2). See *A.M.*, Docket No. 16-1875 (issued August 23, 2017); *Jack B. Wood*, 40 ECAB 95, 109 (1988).

probative value regarding the issue of causal relationship. These reports are therefore insufficient to establish appellant's claim.

Finally, appellant submitted diagnostic studies in the form of x-ray, MRI, and angiogram reports. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused a diagnosed medical condition.¹⁵ The Board finds, therefore, that this evidence is also insufficient to establish appellant's claim.

As the record lacks rationalized medial evidence establishing causal relationship between appellant's diagnosed conditions and the accepted June 6, 2018 employment incident, the Board finds that she has not met her burden of proof.¹⁶

On appeal appellant argues that the medical evidence of record is sufficient to establish her claim. As noted above, however, the evidence of record is insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted June 6, 2018 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted June 6, 2018 employment incident.

¹⁵ *M.L.*, Docket No. 18-0153 (issued January 22, 2020).

¹⁶ *Y.K.*, Docket No. 18-1167 (issued April 2, 2020).

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board